

United States District Court

For the Northern District of California

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6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 No. CR 14-00306 WHA

9  
10 v.

11 LUKE D. BRUGNARA,

12 Defendant.

13 ORDER DENYING MOTION  
14 TO DISMISS AND VACATING  
15 HEARING

16 Defense counsel move to dismiss the indictment, arguing that FBI Agent Jeremy Desor  
17 lied to and intentionally deceived grand jurors during the grand jury testimony. For the reasons  
18 stated below, the motion is **DENIED**. The hearing set for January 28 is **VACATED**.

19 The standard for dismissing an indictment based on alleged misrepresentations to the  
20 grand jury is very high. “[A] district court may not dismiss an indictment for errors in grand jury  
21 proceedings unless such errors prejudiced defendants.” *Bank of Nova Scotia v. United States*,  
22 487 U.S. 250, 254 (1988). Moreover, “dismissal of the indictment is appropriate only if it is  
23 established that the violation substantially influenced the grand jury’s decision to indict, or if  
24 there is grave doubt that the decision to indict was free from substantial influence of such  
25 violations.” *Id.* at 256 (internal citations omitted).

26 Defense counsel allege Agent Desor provided the following three false or misleading  
27 statements to the grand jury (Br. 2–3):

- 28 (1) Agent Desor lied to the Grand Jury when he testified that Mr.  
Brugnara was the intended buyer of the art items and had no assets,  
or money, or the financial ability to purchase them, when Desor

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1 knew that Brugnara Properties was the intended buyer — not Mr.  
2 Brugnara personally — and Brugnara Properties had substantial  
3 assets and had completed over a billion dollars in transactions and  
4 did have the ability to make the purchase if the items were  
5 authentic.

6 (2) The Grand Jury was intentionally deceived when the terms of  
7 the sale of the art items were described to them because they were  
8 told that Mr. Brugnara agreed to buy the items but not told that he  
9 had a minimum five day contingency period (and up to a year  
10 according to Maibaum) to evaluate and accept or reject the items  
11 delivered to 224 Sea Cliff, and that Mr. Brugnara's attorney, Bob  
12 Kane, contacted the claimant's attorney within this contingency  
13 period and informed him that Mr. Brugnara was not buying the  
14 items and the items should be picked up.

15 (3) Agent Desor falsely testified to the Grand Jury on July 17,  
16 2014, that Mr. Brugnara has a cell phone and only uses that cell  
17 phone to make and receive telephone calls. In fact, Mr. Brugnara  
18 owns no cell phone, and uses many different phones. This was  
19 known by the agent as Mr. Brugnara previously testified to this  
20 fact during his testimony at the Form 12 hearing.

21 These assertions are wholly unsupported. Defendant's three-page motion merely asserts these  
22 three alleged false or misleading statements, lays out the legal standard for dismissing  
23 indictments, and then in a completely conclusory manner avers that "if the Grand Jury had not  
24 been misled by the lies and intentional misrepresentations outlined above, then there is a  
25 substantial likelihood the Grand Jury would not have indicted Mr. Brugnara."

26 The motion provides no evidentiary support that Agent Desor lied. It provides no  
27 evidence, letters, communications, or testimony showing that it was Brugnara Properties, rather  
28 than Mr. Brugnara himself, that was the intended buyer of the art. It provides no evidence that  
Brugnara Properties had "substantial assets." It provides no evidence that his claimed five-day  
contingency period was actually a term of his agreement with the alleged victims in this case. It  
provides no evidence to support his allegation that he does not own a cell phone.

This comes nowhere close to meeting the high bar for dismissing indictments set forth in  
*Bank of Nova Scotia*. Nor does it meet our local rule requirement that "[m]otions presenting  
issues of fact shall be supported by affidavits or declarations" (Criminal Local Rule 47-2(b)).  
This requirement might be relaxed in a case where all of the evidence needed to challenge the  
indictment rested in the hands of the government (or third parties) but, here, these allegations by

1 the defense could have been — but were not — sworn to by the accused (or his spouse), a clear  
2 violation of our local rule.

3 The motion to dismiss the indictment is **DENIED**. The hearing set for January 28 is  
4 **VACATED**.

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6 **IT IS SO ORDERED.**

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8 Dated: January 26, 2015.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE